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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/574,230

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Ulrike Schulz

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GREENBLUM & BERNSTEIN, P.L.C.
1950 ROLAND CLARKE PLACE
RESTON, VA 20191

EXAMINER

BROOKS, KRISTIE LATRICE

ART UNIT

PAPER NUMBER

1616

NOTIFICATION DATE

DELIVERY MODE

05/29/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

gbpatent@gbpatent.com
pto@gbpatent.com

Office Action Summary	Application No. 10/574,230	Applicant(s) SCHULZ ET AL.	
	Examiner KRISTIE L. BROOKS	Art Unit 1616	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 46-75 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 46-75 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>2/13/09</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Status of Claims

1. Claims 16-45 are cancelled. Claims 46-75 are new and pending.
2. Receipt and consideration of Applicants remarks filed February 13, 2009 is acknowledged.
3. Rejections not reiterated from the previous Office Action are hereby withdrawn.

The following rejections are either reiterated or newly applied. They constitute the complete set of rejections presently being applied to the instant application.

New Grounds of Rejection Necessitated by Applicant's Amendment

Claim Rejections – 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

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5. Claims 46,48, 54-64, and 72-75 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruning et al. (US 6,942,871) in view of Yu et al. (US 5,571,841).

Applicant claims a cosmetic formulation, wherein the formulation comprises a microemulsion which comprises (a) at least one of an antiperspirant active ingredient t and (b) one or more α -hydroxycarboxylic acid which comprises mandelic acid.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Bruning et al. teach a microemulsion gel composition comprising aluminum zirconium salts in the amount of 5-40%, an oil component, water component, and surfactants (see the abstract, column 1 lines 63-67, column 2 lines 1-14, column 4 lines 60-67, column 7 lines 55-57, Table 1 in column 12, and claims 15-17). The formulation of the invention is transparent (see the abstract and column 2 lines 7-8). The microemulsion can contain polyethoxylated and polypropoxylated emulsifiers (see column 5 lines 29-37). The formulations may contain additional ingredients such as deodorants and α -hydroxy acids (e.g. citric acid, lactic acid, malic acid) (see column 7 lines 63-67 and column 9 lines 3-5 and lines 35-56).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

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Bruning et al. teach the incorporation α -hydroxycarboxylic acids but do not teach mandelic acid. Further, Bruning et al. do not teach the instantly claimed amount of the hydroxycarboxylic acid (i.e. 0.1 to 10% by weight). These deficiencies are cured by the teachings of Yu et al.

Yu et al. teach compositions comprising hydroxycarboxylic acids for enhancing the therapeutic effects of topically applied agents (see the abstract). Hydroxyacids are discovered to enhance the therapeutic efficacy of cosmetic agents, such as antiperspirants, when applied topically to the skin (see column 2 lines 16-40). Examples of the hydroxycarboxylic acids include mandelic acid, glycolic acid, lactic acid, etc. (see column 3 lines 11-21). The concentration of the hydroxyl acids that can be incorporated into the cosmetic formulation ranges from 0.01 to 99% by weight of the formulation (see column 6 lines 44-53). The formulations may be formulation into gels, lotion, stick, etc. (see column 6 lines 64-67).

Finding of prima facie obviousness Rational and Motivation

(MPEP 2142-2143)

One of ordinary skill in the art would have been motivated to incorporate mandelic acid into the microemulsion taught by Bruning because Yu et al. suggest that hydroxycarboxylic acids (e.g. mandelic acid) help enhance the efficacy of antiperspirants.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to incorporate mandelic acid into the microemulsion taught

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by Bruning et al. because it is an obvious variation of hydroxycarboxylic acids that will enhance the efficacy of the antiperspirant in the microemulsion formulation taught by Bruning et al.

Although Bruning et al. do not teach the amount of hydroxycarboxylic acids that are in the formulation, it would have been obvious to one of ordinary skill in the art to incorporate mandelic acid in the amount instantly claimed (i.e. 0.01 to 10% by weight) because it is known to incorporate hydroxycarboxylic acids in cosmetic formulations in the about of 0.01 to 99% by weight. Thus, it is an obvious amount of hydroxycarboxylic acid that may be added to antiperspirant formulations.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

6. Claims 47, 49-53, 65, and 67-71 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bruning et al. (US 6,942,871) in view of Yu et al. (US 5,571,841), and Diec et al. (US 6,468,551).

Applicant claims a cosmetic formulation which is based on a microemulsion and comprises (a) at least one of an antiperspirant active ingredient and a deodorant active ingredient and (b) at least one α -hydroxycarboxylic acid.

Determination of the scope and content of the prior art

(MPEP 2141.01)

Bruning et al. teach a microemulsion gel composition comprising aluminum zirconium salts in the amount of 5-40%, an oil component, water component, and surfactants (see the abstract, column 1 lines 63-67, column 2 lines 1-14, column 4 lines 60-67, column 7 lines 55-57, Table 1 in column 12, and claims 15-17). The formulation of the invention is transparent (see the abstract and column 2 lines 7-8). The microemulsion can contain polyethoxylated and polypropoxylated emulsifiers (see column 5 lines 29-37). The formulations may contain additional ingredients such as deodorants and α -hydroxy acids (e.g. citric acid, lactic acid, malic acid) (see column 7 lines 63-67 and column 9 lines 3-5 and lines 35-56).

Yu et al. teach compositions comprising hydroxycarboxylic acids for enhancing the therapeutic effects of topically applied agents (see the abstract). Hydroxyacids are discovered to enhance the therapeutic efficacy of cosmetic agents, such as antiperspirants, when applied topically to the skin (see column 2 lines 16-40). Examples of the hydroxycarboxylic acids include mandelic acid, glycolic acid, lactic acid, etc. (see column 3 lines 11-21). The concentration of the hydroxyl acids that can be incorporated into the cosmetic formulation ranges from 0.01 to 99% by weight of the formulation (see column 6 lines 44-53). The formulations may be formulation into gels, lotion, stick, etc. (see column 6 lines 64-67).

Ascertainment of the difference between the prior art and the claims

(MPEP 2141.02)

Bruning et al. teach a microemulsion antiperspirant gel comprising a oil component, water and emulsifiers, but do not specifically teach a oil-in-water microemulsion which comprises an oil phase, a water phase and emulsifiers. This deficiency is cured by the teachings of Diec et al.

Diec et al. teach microemulsion gels based on the oil in water type, comprising an oil phase, substantially consisting of not easily volatile constituents, and an aqueous phase containing one or more O/W emulsifiers free from ethylene oxide and propylene oxide and possibly one or more additional O/W emulsifiers, an emulsifier content which is lower than 20 wt. % related to the full weight of the microemulsion (see the abstract, column 7 lines 50-67 and column 8 lines 1-10). The microemulsion gel is obtained in such a way that a mixture of basic constituents, consisting of an aqueous phase, an oil phase, one or more O/W emulsifiers, possibly one or more additional O/W emulsifiers, additional or active agents, is made to react against each other in a mixing ratio so that a microemulsion can be obtained and in which droplets of discontinuous oil phase are bound to each other by one or more cross-linking substances, whose molecules are characterized by at least one hydrophylic area having a suitable expansion for bridging of distance between each microemulsion droplet and at least one hydrophobic area, which can interact hydrophobically with the microemulsion droplets(abstract, column 7 lines 50-67 and column 8 lines 1-10). It is advantageous to add W/O emulsifiers to the microemulsion gel (see column 23 lines 51-67). The microemulsion gels can be used as bases for cosmetic deodorant/antiperspirants (see column 26 lines 47-67 and column

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27 lines 1-17). The microemulsion gels are stable and provide good skin tolerability (see column 4 lines 32).

Finding of prima facie obviousness Rational and Motivation

(MPEP 2142-2143)

One of ordinary skill in the art would have been motivated to make a oil-in-water microemulsion comprising an oil phase, water phase and an emulsifier because antiperspirant microemulsion gel comprising an oil phase, water phase and emulsifiers are known to be stable and provide good skin tolerability as suggested by Diec et al.

Thus, it would have been obvious to one of ordinary skill in the art at the time the claimed invention was made to prepare in the manner taught by Diec et al. for the purpose of providing stability to the composition and enhanced benefits to the and skin.

Therefore, the invention as a whole would have been *prima facie* obvious to one of ordinary skill in the art at the time the invention was made, as evidenced by the reference, especially in the absence of evidence to the contrary.

Response to Arguments

Applicant's arguments with respect to claims 16-45 have been considered but are moot in view of Applicant's cancellation of claims 16-45 and the new ground(s) of rejection with respect to claims 46-75 is presented above.

Conclusion

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kristie L. Brooks whose telephone number is (571) 272-9072. The examiner can normally be reached on M-F 8:30am-6:00pm Est..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Johann R. Richter can be reached on (571) 272-0646. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

KB

/Johann R. Richter/

Supervisory Patent Examiner, Art Unit 1616